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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JOSEPH A. NELSON,

12 Plaintiff,

v.

13 THURSTON COUNTY et al.,

14 Defendants.

CASE NO. 3:18-cv-05184-DGE

ORDER ON PRE-TRIAL MOTIONS
AND MOTIONS IN LIMINE

16 The Court hereby issues the following rulings:

- 17 • The parties are directed to file a proposed Pre-Trial Order by Wednesday, June 7,
18 2023. The parties shall narrow down their list of witnesses identified in the Pre-
19 Trial Order and exhibits based. All exhibits stipulated to by the parties should be
20 marked as “admitted.”
- 21 • The parties are directed to meet and confer as to whether mediation with a
22 settlement judge would be productive at this stage. If so, they are directed to
23 contact the Courtroom Deputy, Gretchen Craft, immediately.

- **Defendant's Motion to Permit Proposed Questions for Juror Questionnaire (Dkt. No. 255)**
 - GRANTED
- **Plaintiff's Motion to Temporarily Transfer Evidence in the Custody of Lewis County Sheriff's Office (Dkt. No. 282)**
 - Plaintiff is directed to submit a proposed order with language indicating that if the Lewis County prosecuting office has significant concerns about this order, it should contact the Court for a remote emergency hearing prior to transfer.
 - Defendants are directed provide responsive briefing to the motion, if any, by Monday, June 5, 2023.
- **Defendant's Motion for Leave to Permit Defendants' Objections to Plaintiff's Deposition Designations and Counter Designations by May 31, 2023 (Dkt. No. 280)**
 - For each deposition designation, the party offering deposition testimony shall identify by Wednesday June 7, 2023 the basis for offering the deposition pursuant to Federal Rule of Civil Procedure 32. Depositions being used solely for impeachment need not be identified or designated.

Rulings on Motions in Limine. The following is a summary of the Court's rulings on the parties' motions in limine. For the reasons stated during the pre-trial conference, the Court ORDERS as follows:

- 1 • **Plaintiff's Motion in Limine # 1: An Order Precluding Testimony or**
2 **Evidence Regarding the Circumstances or Terms under Which Plaintiff**
3 **Employed His Attorney.**
4 ○ Agreed; GRANTED
- 5 • **Plaintiff's Motion in Limine # 2: An Order Precluding Testimony or**
6 **Evidence Not Disclosed by Defendants in Response to Plaintiff's Discovery**
7 **Requests.**
8 ○ Agreed; GRANTED
- 9 • **Plaintiff's Motion in Limine # 3: An Order Precluding Testimony or**
10 **Evidence Regarding the Filing of this Motion in Limine.**
11 ○ Agreed; GRANTED
- 12 • **Plaintiff's Motion in Limine # 4**
13 ○ WITHDRAWN
- 14 • **Plaintiff's Motion in Limine # 5: An Order Precluding Testimony or**
15 **Evidence Regarding the Use by the Defendants of Any Witness Not Listed in**
16 **the Defendants' Witness Lists**
17 ○ DENIED
- 18 • **Plaintiff's Motion in Limine # 6: An Order Precluding Testimony or**
19 **Evidence by the Defendants of Any Testimony or Any Reference to the**
20 **Autopsy or Other Forensic Records to Establish That Joel Nelson Had Used**
21 **Illegal Drugs Prior to the Incident.**
22 ○ DENIED

- 1 • **Plaintiff's Motion in Limine # 7: An Order Precluding Testimony or**
2 **Evidence of the Report, Opinions and Conclusions of Defendants' Denoted**
3 **Biomechanical Expert, Jerrod W. Carter, Ph.D.**
4 ○ Agreed; GRANTED
- 5 • **Plaintiff's Motion in Limine # 8: An Order Precluding Testimony or**
6 **Evidence of the Use by the Defendants of Joel Nelson's Blood Test Results**
7 **from the Washington State Crime Lab Dated February 2, 2016, Showing a**
8 **Positive Result for Amphetamine, Methamphetamine, Sertraline, Morphine**
9 **and THC.**
10 ○ DENIED
- 11 • **Plaintiff's Motion in Limine # 9: An Order Precluding Any Argument or**
12 **Testimony about Any Prior Criminal Convictions of Joel Nelson.**
13 ○ GRANTED
- 14 • **Plaintiff's Motion in Limine # 10: An Order Precluding Testimony or**
15 **Evidence about Joel Nelson Being Subject to a Warrant Issued for His Arrest**
16 **as a Result of a Purported Possession of a Stolen Car on January 1, 2016.**
17 ○ GRANTED
- 18 • **Plaintiff's Motion in Limine # 11: An Order Precluding Any Argument or**
19 **Evidence That Thurston County Sheriff's Office ("TCSO") Dispatcher's**
20 **Response of "No Record" to Deputy Ditrich's Request to "Run" the Name of**
21 **Joshua Lincoln Nelson Supports a Finding of Probable Cause to Arrest Joel**
22 **Nelson**
23 ○ DENIED

- 1 • **Plaintiff's Motion in Limine # 12**
 - 2 ○ WITHDRAWN
- 3 • **Plaintiff's Motion in Limine # 13: An Order Precluding Any Testimony or**
 - 4 **Evidence Referring to Joel Nelson's Actions Before Being Sighted by Deputy**
 - 5 **Ditrich.**
 - 6 ○ DENIED
- 7 • **Plaintiff's Motion in Limine # 14: An Order Precluding Any Testimony or**
 - 8 **Evidence of the Contents of the Backpack or the Clothes That Joel Nelson**
 - 9 **Had Been Wearing or Carrying and Which Were Recovered from the Scene.**
 - 10 ○ DENIED as to evidence related to substance use/paraphernalia
 - 11 ○ GRANTED as to evidence related to mail and other items
- 12 • **Plaintiff's Motion in Limine # 15: An Order Precluding Testimony or**
 - 13 **Evidence of Deputy Ditrich's Claims That the Area He Stopped and Seized**
 - 14 **Joel Nelson Was an Area Subject to a Large Number of Residential**
 - 15 **Burglaries Prior to January 5, 2016.**
 - 16 ○ DENIED
- 17 • **Plaintiff's Motion in Limine # 16**
 - 18 ○ WITHDRAWN
- 19 • **Plaintiff's Motion in Limine # 17: An Order Precluding Any Testimony**
 - 20 **Regarding the Unsupported Opinions of Defendants' Police Procedures**
 - 21 **Expert Christopher M. Nielsen.**
 - 22 ○ GRANTED. The Court notes this ruling also applies to Plaintiff's expert
 - 23 witnesses: experts are not permitted to draw legal conclusions.

- 1 • **Plaintiff's Motion in Limine # 18: An Order Precluding Testimony or Any**
2 **Reference by Defendants Expert, Kyle D. Sumpter's of His Opinion of**
3 **Deputy Ditrich's Performance During His Interaction with Joel Nelson.**
4 ○ GRANTED as to language "commending" Defendant Ditrich.
- 5 • **Plaintiff's Motion in Limine # 19: An Order Precluding Any Testimony or**
6 **Evidence of Defendants' Forensic Expert, Aaron Brudenell.**
7 ○ Agreed; GRANTED
- 8 • **Plaintiff's Motion in Limine # 20: An Order to Forbid Any Testimony or**
9 **Evidence in the Form of Legal Conclusions from Defendants' Experts,**
10 **Including Kyle D. Sumpter and Chris A. Nielsen at Trial.**
11 ○ GRANTED. The Court notes this ruling also applies to Plaintiff's expert
12 witnesses: experts are not permitted to draw legal conclusions.
- 13 • **Plaintiff's Motion in Limine # 21: An Order Limiting Defendants to Call**
14 **Only One Police Procedures Expert.**
15 ○ GRANTED. Defendants may choose only one police procedures expert to
16 testify.
- 17 • **Defendant's Motion in Limine # 1: References to Liability Insurance or**
18 **Indemnification.**
19 ○ Agreed; GRANTED
- 20 • **Defendant's Motion in Limine # 2: All Non-Party Witnesses Should be**
21 **Excluded from the Courtroom During Trial.**
22 ○ Agreed; GRANTED
- 23 • **Defendant's Motion in Limine # 3: Evidence of Settlement Negotiations.**

1 ○ Agreed; GRANTED

2 ● **Defendant's Motion in Limine # 4: Relative Financial Condition of the
3 Parties.**

4 ○ GRANTED as to Defendant Thurston County.

5 ○ The Court reserves judgment as to issues involving Defendant Ditrich.

6 ● **Defendant's Motion in Limine # 5: Evidence or Theories not Previously
7 Disclosed in Discovery or Properly Supplemented Pursuant to FRCP 26.**

8 ○ Agreed; GRANTED

9 ● **Defendant's Motion in Limine # 6: Testimony from Witnesses Whose
10 Knowledge is no Longer Relevant to the Issues.**

11 ○ DENIED

12 ● **Defendant's Motion in Limine # 7: Statements That Invite Jurors to
13 Conceptually Put Themselves in the Place of the Plaintiff in Considering any
14 of the Issues.**

15 ○ GRANTED. The Court reminds both parties use of the “Golden Rule
16 Argument” is improper.

17 ● **Defendant's Motion in Limine # 8: Statements Outside the Record for
18 "Political" Effect.**

19 ○ DENIED as to Defendant Ditrich.

20 ○ GRANTED as to Defendant Thurston County.

21 ● **Defendant's Motion in Limine # 9: Statements about Post-Incident Actions.**

22 ○ DENIED

- 1 • **Defendant's Motion in Limine # 10: Statements on Claims Dismissed from**
2 **the Case should be Prohibited.**
 - 3 ○ DENIED as to opinions identified in paragraphs A, B, E, F of motion.
 - 4 ○ GRANTED as to opinions identified in paragraphs C and D of motion.
- 5 • **Defendant's Motion in Limine # 11: Statements that it was Improper or a**
6 **Conflict of Interest for the Lewis County Sheriff's Office to Investigate the**
7 **Nelson Shooting Due to Sheriff Snaza's Brother Being Lewis County Sheriff.**
 - 8 ○ GRANTED
- 9 • **Defendant's Motion in Limine # 12: Statements that Sheriff John Snaza**
10 **"Flunked" his Pre-employment Polygraph.**
 - 11 ○ GRANTED
- 12 • **Defendant's Motion in Limine # 13: Plaintiff's Expert, Matthew Noedel**
13 **Should be Excluded, and Only one of Plaintiff's Accident Reconstruction**
14 **Experts Should be Permitted.**
 - 15 ○ DENIED. Defendants may make an objection later as to cumulative
16 evidence.
- 17 • **Defendant's Motion in Limine # 14: Only One of Plaintiff's Police Practices**
18 **and Procedures Experts Should Be Permitted.**
 - 19 ○ DENIED. The Court notes there should not be overlapping testimony.
20 Plaintiff is directed to instruct expert witnesses as to their respective roles
21 and scope of their testimony.
- 22 • **Defendant's Motion in Limine # 15: The Order in Limine Should Reflect that**
23 **the Testimony of Leo Poort has been Limited.**

- 1 ○ GRANTED, insofar as Judge Lasnik's prior order limits Mr. Poort's
2 testimony.

3 ● **Defendant's Motion in Limine # 16: Expert Opinions Which Invade Matters
4 of Common Knowledge and Experience.**

- 5 ○ GRANTED

6 ● **Defendant's Motion in Limine # 17: Expert Opinions That Are Conclusions
7 of Law.**

- 8 ○ GRANTED

9 ● **Defendant's Motion in Limine # 18: Expert Opinions that are Inadmissible
10 Speculation or Conjecture.**

- 11 ○ DENIED

12 ● **Defendant's Motion in Limine # 19: Expert Opinions that Weigh the
13 Credibility of Witnesses.**

- 14 ○ GRANTED as to weighing credibility. Evidence is admissible to the
15 extent it is not a comment on credibility.

16 ● **Defendant's Motion in Limine # 20: Plaintiff Should be Precluded from
17 Making Statements Suggesting that Defendants Participated in a
18 “Conspiracy” or a “Cover Up.”**

- 19 ○ DENIED, with guidance that Plaintiff be mindful of forgoing
20 inflammatory language when presenting evidence.

21 ● **Defendant's Motion in Limine # 21: Statements about Unrelated Claims of
22 Policy Violations.**

1 ○ GRANTED, with exception that evidence related to violation of policy
2 governing maintaining fully loaded sidearms.

3 ● **Defendant's Motion in Limine # 22: Statements on Issues not Pled, or**
4 **Reasserting Claims Dismissed as a Matter of Law on Summary Judgment.**

5 ○ Agreed; GRANTED

6 ● **Defendant's Motion in Limine # 23: Statements That any Persons Other**
7 **Than Deputy Ditrich Who are Named in the Amended Complaint or**
8 **Referred to Therein as "Doe" Defendants Have Liability or Other**
9 **Responsibility for Plaintiff's Claims.**

10 ○ GRANTED

11 ● **Defendant's Motion in Limine # 24: Statements that Deputy Ditrich Could**
12 **have Ignored Probable Cause to Arrest Joel Nelson.**

13 ○ DENIED

14 ● **Defendant's Motion in Limine # 25: Statements about the Lack of Vehicle or**
15 **Body Camera Video Evidence.**

16 ○ GRANTED

17 ● **Defendant's Motion in Limine # 26: Statements about Punitive Damages.**

18 ○ GRANTED as to Defendant Thurston County

19 ○ DENIED as to Defendant Ditrich

20 ● **Defendant's Motion in Limine # 27: Statements that the Parties have Filed**
21 **Motions in Limine.**

22 ○ Agreed; GRANTED

- **Defendant's Motion in Limine # 28: Statements on Issues not Contemplated by Pre-Trial Order.**
 - DENIED, with admonishment about exceeding the scope of the Pre-Trial Order.
 - **Defendant's Motion in Limine # 29: The Parties Should Provide 24 Hours Notice of Witnesses, and Deposition Testimony in Lieu of a Witness Prior to Presentation at Trial.**
 - GRANTED

Dated this 2nd day of June, 2023.


David G. Estudillo
United States District Judge